Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-105

(Undocketed)

JULIUS JERRY PERLMAN,

Petitioner,

vs.

PETER J. PITCHESS, Sheriff,
County of Los Angeles,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. .....
(Undocketed)

JULIUS JERRY PERLMAN,

Petitioner,

vs.

PETER J. PITCHESS, Sheriff,
County of Los Angeles,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATE COURT OF APPEALS
FOR THE NINTH CIRCUIT

To: The United States Supreme Court, October Term, 1975:

The petitioner, JULIUS JERRY PERLMAN, prays that a Writ of Certiorari issue to review the Judgment and Order of the United States Court of Appeals for the Ninth Circuit filed April 21, 1975, denying the Application for a Certificate of Probable Cause to appeal from the judgment of the United States District Court for the Central District of California filed March 20, 1975. The Judgment of the

United States District Court denied the petitioner's Petition for Writ of Habeas Corpus by a prisoner in state custody.

OPINION BELOW

No opinion was rendered by the United States Court of Appeals for the Ninth Circuit. A copy of the Order filed April 21, 1975 denying the Application for Certificate of Probable Cause appears in the appendix hereto as Appendix "A." A copy of the Order denying Petition for Writ of Habeas Corpus and Remanding Petitioner to Custody and Exonerating Bail filed by the United States District Court for the Central District of California on March 20, 1975 appears in the appendix hereto as Appendix "B." A copy of the Judgment of the United States District Court for the Central District of California, filed March 20, 1975, appears in the appendix hereto as Appendix "C." A copy of the Report and Recommendation of Magistrate submitted pursuant to the provisions of Title 28, U.S.C., Section 636 (b) and filed March 20, 1975 appears in the appendix hereto as Appendix "D."

JURISDICTION

The Judgment of the Court of Appeals for the Ninth Circuit was filed on April 21, 1975, denying the Application for Certificate of Probable Cause to appeal from the judgment filed on March 20, 1975 denying a Petition for Writ of Habeas Corpus. A copy of that Order appears in the appendix hereto as Appendix "A." The Court's juris-

diction is invoked pursuant to Title 28, U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether a finding of deliberate by-pass of state remedies in a state habeas corpus application is erroneous in view of the following facts:

a. Petitioner's counsel objected under *Escobedo v. Illinois*, 378 U.S. 478 (1964), during the course of trial to the introduction of statements elicited from the petitioner by law-enforcement officials, and the objection was apparently misunderstood by the trial court and overruled;

b. The issue of the admissibility of the statements was raised on direct appeal but not considered by the state appellate court, based upon its determination that the objection in trial was insufficient to preserve the issue;

c. The issue of admissibility was presented to the Supreme Court of the State of California by Petition for Hearing, which petition was denied without opinion;

d. Collateral review of the admissibility of the statement is precluded under California state law;

e. There are presently no state remedies available to challenge the admissibility of the testimony?

2. Whether Title 28, U.S.C., Section 2243 and *Wingo v. Wedding*, ... U.S. ....., 94 S. Ct. 2842 (1974), require that, after a return to a petition for writ of habeas corpus, certifying the true cause for detention, is filed on order of court, a hearing of appropriate scope be held before a United States District Court Judge, rather than

before a United States Magistrate?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Relevant portions of the following statutory provisions appear in Appendix "E":

28 U S C. § 636(b)
28 U S C. § 2243
28 U S C. § 2254(b)
28 U S C. § 2254(c)

STATEMENT OF THE CASE

A Petition for Writ of Habeas Corpus by a person in state custody was filed on behalf of petitioner, JULIUS JERRY PERLMAN, on December 24, 1974 in the United States District Court for the Central District of California. The petition alleged that the petitioner had suffered a conviction for violation of California Penal Code § 487.1, grand theft, on April 7, 1966. On that date the petitioner was sentenced to state prison for the term prescribed by law. Notice of Appeal was filed, a stay of execution of sentence was entered, and the petitioner was re-sentenced on June 30, 1969. At that time proceedings were suspended and the petitioner was placed on probation for a period of ten years on a series of conditions. The Petition for Writ of Habeas Corpus alleged that the conviction and judgment and order of the Superior Court of the State of California imposing probation were void in that extrajudicial statements were admitted at the petitioner's trial, in violation of the constitu-

tional rules set forth in *Escobedo v. Illinois,* 378 U.S. 478 (1964). The criminal conviction was appealed to the Court of Appeal of the State of California, Second Appellate District, which court affirmed the judgment of conviction on May 20, 1968. The Court of Appeal determined that, although petitioner's counsel had objected to the introduction of the statements, the objection was insufficient and that, consequently, the issue had not been preserved on appeal. A timely Petition for Hearing to the California Supreme Court was denied without opinion on June 17, 1968.

Over petitioner's objections, the Petition for Writ of Habeas Corpus was referred by the Honorable Campbell Lucas, United States District Judge, to United States Magistrate Venetta S. Tassopulos on or about December 24, 1974. Petitioner objected generally to such transfer and based upon the necessity for a determination on the petition by a United States District Judge.

Thereafter, on March 20, 1975, a Report and Recommendation of Magistrate was filed in the District Court, and, on that same date, the Order Denying Petition for Writ of Habeas Corpus and Remanding Petitioner to Custody and Exonerating Bail was entered and filed.

Petitioner thereafter filed a timely Notice of Appeal and Designation of Record on Appeal, an Application for Stay Pending Appeal and Application for Certificate of Probable Cause in the United States District Court for the Central District of California. The Application for Stay Pending Appeal and for Certificate of Probable Cause were denied in the absence of Judge Kelleher by the Honorable A. Andrew Hauk. Thereafter, an Application for Stay

Pending Appeal was obtained from the Honorable Walter Ely, Judge, United States Court of Appeals for the Ninth Circuit. Thereafter, the United States Court of Appeals for the Ninth Circuit, on April 21, 1975, entered its Order denying the Application for Certificate of Probable Cause and the Application for Stay Pending Appeal.

On May 8, 1975, petitioner filed with this Honorable Court an Application for Stay Pending Petition for Writ of Certiorari, which application was denied by Mr. Justice Brennan.

REASONS FOR GRANTING A WRIT

I

The Finding Of Deliberate By-Pass Of State Remedies Is Erroneous In View Of Petitioner's Attempt To Raise The Admissibility Of His Extrajudicial Statements On Direct Appeal To Both The Court Of Appeal Of The State Of California And The Supreme Court Of The State Of California, And In View Of A State Rule Which Precludes Collateral Review Of The Admissibility Of Such Statements.

This Court has consistently underscored the principle that a person in state custody will be denied access to a federal forum on the ground of failure to exhaust state remedies only if he has deliberately by-passed the orderly procedure of the state with the intent to relinquish a known right or privilege. The application of the standards enunciated in 28 U.S.C. § 2254(b) and (c) with regard to exhaustion of state remedies has received a great deal of judicial attention. The purposes

which gave rise to the doctrine were recently explained by this Court in *Braden v. Thirtieth Judicial Circuit Court of Kentucky*, ... U.S. ..... , 93 S. Ct. 1123 (1973), as follows:

> "The exhaustion doctrine is a judicially-crafted instrument which reflects a careful balance between important interests of federalism and the need to preserve the writ of habeas corpus as a 'swift and imperative remedy in all cases of illegal restraint or confinement'. (Citation omitted.) It cannot be used as a blunderbuss to shatter the attempt at litigation of constitutional claims without regard to the purposes that underlie the doctrine and that call it into existence." (93 S. Ct. at 1127.)

Recognizing the ultimate necessity that federal constitutional claims be determined by the federal judiciary, this Court in *Fay v. Noia*, 372 U.S. 438, 83 S. Ct. 822 (1963), liberalized access to those courts through application of a strict definition of the exhaustion of state remedies principles. The Court noted at 372 U.S. 439, 83 S. Ct. 849:

> "If a habeas applicant, after consultation with competent counsel or otherwise, understandingly and knowingly forewent the privilege of seeking to vindicate his federal claims in the state courts, whether for strategic, tactical, or any other reasons that can fairly be described as the *deliberate by-passing* of state procedures, then it is open to the federal courts on habeas to deny him

our relief . . . . "

The Court further stated that such a deliberate by-pass depends on the "considered choice of the petitioner" and must evidence "an intentional relinquishment or abandonment of a known right or privilege." *Ibid.* See *Townsend v. Sain*, 372 U.S. 293, 317, 83 S. Ct. 745, 759 (1963).

Superimposed upon the deliberate by-pass requirement is the recognition that protection of federal constitutional rights requires that access to federal courts be open and that comity merely requires that the states be given an opportunity to resolve the federal issue prior to resort to the federal forum. *Wilwording v. Swenson*, 404 U.S. 249, 92 S. Ct. 407 (1971). See also *Ross v. Craven*, 478 F.2d 240, 241 (9th Cir., 1973).

This Court has thus applied the strict standard of *Johnson v. Zerbst*, 304 U.S. 458, 58 S. Ct. 1019 (1938), to wit: "an intentional relinquishment or abandonment of a known right or privilege" to the deliberate by-pass issue. Thus, "once the federal claim has been fairly presented to the state courts, the exhaustion requirement is satisfied" *Picard v. Connor*, 404 U.S. 270, 275, 92 S. Ct. 509, 512 (1971).

This strict standard has clearly not been met in the present case. The colloquy between petitioner's counsel at trial and the court reveals that defense counsel properly raised the objection to the extrajudicial statements and clearly intended to do so. The issue was pursued to the Court of Appeal of the State of California, and thereafter, by Petition for Hearing, to the California Supreme Court. Obviously, there has been no intentional relinquishment

of a known right. The intent was to object and to object fully. When measured against the heated conduct of the normal criminal trial, it is absolutely clear that the defense at trial was fully of the opinion—and rightfully so—that the issue had been presented to the Superior Court. The issue is especially crucial here in view of the express reluctance of the courts of the State of California to entertain such an issue upon collateral review. Thus, the California Supreme Court in *In re Sterling*, 63 Cal. 2d 486, 487 (1965), stated:

> "We held that the availability of collateral attack to challenge violations of constitutional rights must be considered in light of the relevance of the violation to the correct determination of the petitioner's guilt, the purpose of the constitutional principle involved, and the effect of granting the remedy would have on the administration of criminal justice . . . Unlike the denial of a right to counsel, the knowing use of perjured testimony or suppression of evidence, the use of an involuntary confession, . . . carries with it no risk of convicting an innocent person."

See also *In re Terry*, 4 Cal. 3d 911 (1971).

Access to the federal jurisdiction with regard to issues of federal right is of paramount consideration in the structure of our government. Ultimate resolution of these issues by the federal courts is the only method of protecting constitutional rights and ensuring their uniform application. The petitioner here has attempted to raise the issues before the state courts of California but has not

obtained relief or even consideration of the issue. The resolution of this case is of fundamental importance to the administration of justice and to the uniform application of constitutional principles.

II

Title 28, United States Code, Section 2243 Requires That, After A Return To A Petition For Writ Of Habeas Corpus, Certifying The True Cause For Detention, Is Filed On Order Of Court, A Hearing Of Appropriate Scope Be Held Before A United States District Court Judge Rather Than Before A United States Magistrate.

The Petition for Writ of Habeas Corpus in the present case was referred, over objection, to a United States Magistrate for recommendation. This recommendation was thereafter adopted by the District Court without hearing upon either the substantive constitutional issue or upon the issue of deliberate by-pass. This Court in *Wingo v. Wedding*, ... U.S. ..... , 94 S. Ct. 2842 (1974), analyzed in great depth the legislative history and intent of the Federal Magistrate's Act with regard to habeas corpus applications. The Court was there faced with the prospect that its earlier determination in *Holiday v. Johnson*, 313 U.S. 342, 61 S. Ct. 1015 (1941), was modified by that Act. In *Holiday*, the District Court determined that the application there would entitle the petitioner to relief if the facts alleged were true. The matter was referred to a magistrate who thereafter submitted findings of fact and conclusions of law and recommended that the writ be denied. After

hearing oral argument on the commissioner's report, the District Judge entered an order discharging the writ. This Court reversed and held that a petitioner under habeas corpus was entitled to a factual determination and hearing by a Judge of the District Court rather than by a United States Magistrate. In so doing, this Court underscored the necessity for a District Court determination of the crucial facts and a "weighing and appraising" of the testimony.

In *Wingo*, this Court concluded that the Magistrate Act had not altered the necessity for a District Court hearing and determination of the federal habeas corpus application. The present case thus presents a logical extension of the *Wingo* argument. For, of paramount concern in any federal habeas corpus application by a prisoner in state custody is the resolution of the substantive issues together with the issue of whether there has occurred a "deliberate by-pass." With regard to the latter question, this Court has stated in *Fay v. Noia*, *supra*, at 372 U.S. 439, 83 S. Ct. 849:

> "Nor does the state courts' finding of waiver bar independent determination of the question by the federal courts on habeas corpus, for a waiver affecting federal rights is a federal question."

In the present case, a substantial question is involved with regard to the propriety of the determination by the California appellate court of waiver. As indicated above, the transcript of the trial clearly indicates that an objection was made. Similarly, the conduct of trial counsel does not indicate an intentional relinquishment of the right to

object, but, on the contrary, seems to evidence an understanding that the objection was made and overruled. In any event, both this issue and the underlying substantive issue should have been given plenary consideration by the District Court Judge rather than be decided through a mere reliance upon the recommendation and report of the magistrate. The failure to offer petitioner this hearing acted as fully to deprive him of his federal constitutional rights as the state action which denied him of his substantive rights.

CONCLUSION

This petition presents fundamental issues regarding the availability and appropriate scope of federal review of federal constitutional issues by a prisoner in state custody. The necessity for a clear explanation of the deliberate by-pass standard and of the necessity for a District Court Judge's determination on both the substantive and procedural issues is of paramount importance to both the state prisoners throughout the nation and to insure uniform application of constitutional principles announced by the lower federal courts and by this Honorable Court. It is therefore respectfully submitted that a Writ of Certiorari should issue to review the judgment and order of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

MAURICE HARWICK

DONALD M RE of
NEWTON, RE & RUSSELL

Attorneys for Petitioner

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APPENDIX "A"

ORDER

In the United States Court of Appeals for the Ninth Circuit.

No. 75-8144

DC Cv. 74-3776 RJK

JULIUS JERRY PERLMAN, Petitioner, vs. PETER J. PITCHESS, Sheriff, Los Angeles County, Respondent.

[FILED APRIL 21, 1975]

The application for a certificate of probable cause to appeal from the judgment filed on March 20, 1975, denying a petition for a writ of habeas corpus is denied as legally frivolous for the reasons expressed by the district court.

The application for a stay pending appeal is denied.

EUGENE A. WRIGHT

OZELL M. TRASK

United States Circuit Judges

APPENDIX "B"

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS REMANDING PETITIONER TO CUSTODY AND EXONERATING BAIL

In the United States District Court, Central District of California

Case No. CV-74-3776-RJK (T)

JULIUS JERRY PERLMAN, Petitioner, v. PETER J PITCHESS, SHERIFF, LOS ANGELES COUNTY, Respondent.

[FILED MARCH 20, 1975]

Pursuant to judgment signed and filed this date,

IT IS ORDERED that the petition for writ of habeas corpus is denied.

IT IS FURTHER ORDERED that petitioner appear in Department 100 of the Los Angeles Superior Court located at 111 North Hill Street, Los Angeles, California, on April 7, 1975, at 9:00 A.M.

IT IS FURTHER ORDERED that bail previously posted is exonerated after petitioner's appearance in Department 100 of the Los Angeles Superior Court.

IT IS FURTHER ORDERED that the Clerk serve a copy of this Order Denying Petition for Writ of Habeas Corpus Remanding Petitioner to Custody and Exonerating Bail, the Judgment and the Report and Recommendation of the United States Magistrate as follows:

By United States mail, certified, return receipt requested:

Julius Jerry Perlman, petitioner

Maurice Harwick, Esq.
8383 Wilshire Boulevard, Suite 542
Beverly Hills, California 90211
Attorney for Petitioner

Barry M. Sax, Esq.
Deputy District Attorney
Major Fraud Division
849 South Broadway, 9th Floor
Los Anglees, California 90014

By United States mail, first class:

Attorney General of the State of California;
Presiding Judge, Los Angeles Superior Court;
Clerk, Department 100, Los Angeles Superior Court.

DATED: March 19th, 1975.

ROBERT J. KELLEHER
United States District Judge

APPENDIX "C"

JUDGMENT

In the United States District Court, Central District of California.

Case No. CV-74-3776-RJK (T)

JULIUS JERRY PERLMAN, Petitioner, v. PETER J. PITCHESS, SHERIFF, LOS ANGELES COUNTY, Respondent.

[FILED MARCH 20, 1975]

Pursuant to 28 U.S.C. § 636(b), the Court has reviewed the petition and the report and recommendation dated March 19, 1975, on file herein, and concurs with and adopts the findings and conclusions of the United States Magistrate.

IT IS ADJUDGED that the petition for writ of habeas corpus is denied.

IT IS ORDERED that the Clerk serve a copy of this judgment and of the report and recommendation of the United States Magistrate, by United States mail, on the petitioner, on the Attorney General of the State of California, and the Presiding Judge, Los Angeles Superior Court.

DATED: March 19th, 1975.

ROBERT J. KELLEHER
United States District Judge

APPENDIX "D"

REPORT AND RECOMMENDATION OF MAGISTRATE

In the United States District Court, Central District of California.

Case No. CV-74-3776-RJK (T)

JULIUS JERRY PERLMAN, Petitioner, v. PETER J. PITCHESS, SHERIFF, LOS ANGELES COUNTY, Respondent.

[FILED MARCH 20, 1975]

This report and recommendation is submitted to the Honorable Robert J. Kelleher, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636(b) and General Order No. 104-D of the United States District Court for the Central District of California.

On December 24, 1974, petitioner, in custody of the Los Angeles County Sheriff and represented by counsel filed a petition for writ of habeas corpus. Petitioner also requested that this Court set bail pending further proceedings.

A Motion to Vacate the Reference was denied and the case referred to Magistrate Geffen in his capacity as the duty magistrate.

After a hearing the Magistrate set bail in the sum of $100,000 Corporate Surety or Appearance Bond with 10% deposit and two sureties to justify fully or one surety to fully justify with equity in real property in the amount of

$150,000 deeded to Clerk of the Court. A further condition of release was that petitioner report to Mr. William Sands, Los Angeles Sheriff's Office daily to surrender passport, if any. A Return to Order to Show Cause was filed. Petitioner filed a Traverse

Petitioner is currently on bailed release. On February 3, 1966 petitioner was found guilty of one count of grand theft, in violation of Section 487.1 of the California Penal Code.

His conviction was affirmed on appeal to Division Five of the California Court of Appeal, Second Appellate District. Among the issues there presented, petitioner asserted error in the admission of evidence from a police officer, concerning a conversation between him and the petitioner. The court refused to reach the merits of this contention. Instead, it held that it could not overlook the failure of petitioner's trial counsel to specifically and timefully object to the evidence. Since counsel thereby had failed to elicit from the officer whether petitioner was advised of his constitutional rights under *Escobedo v. Illinois*, 378 U.S. 478 (1964), and *People v. Dorado*, 62 Cal. 2d 338 (1965), no factual basis for determination of the issue existed.

Petitioner filed a petition for hearing in the California Supreme Court, which was denied on June 17, 1968. He has not sought any post-conviction relief by habeas corpus (Petn. p. 13).

Petitioner alleges that he was resentenced on June 30, 1969. Proceedings were suspended and probation granted for a period of 10 years on various terms and conditions,

including that petitioner neither engage in gambling activity nor possess gambling paraphernalia.

On December 5, 1974, petitioner alleges that he was arrested and subsequently charged with violations of Penal Code Sections 12021 and 330.1, possession of a firearm by a former felon and possession of a gambling device, respectively.

As his sole ground for relief, petitioner here contends that the receipt into evidence at trial of his extrajudicial statements violated the rules set forth in *Escobedo* and *Dorado, supra,* thereby validating the conviction, and the charges of violation of probation, which petitioner has subsequently incurred.

The law is settled that an application for writ of habeas corpus need not be entertained when the petitioner has totally failed to exhaust presently available state court remedies. 28 U.S.C. § 2254(b) and (c). To fulfill this requirement, a petitioner must present the *same* facts and legal contentions sought to be presented to the federal court to the highest state court by any means available. 28 U.S.C. § 2254(c).

It is exceedingly clear that petitioner has not complied with the above requirement. Petitioner has presented this court with a factual basis involving the circumstances which surrounded his same meeting with the police officers. Objections were never set forth at trial and were not a part of the record on appeal by which the appellate court was bound. California Rules of Court, Rule 33. In short, a sharp disparity exists between the facts presented to the

state courts and those presented here.

It is equally apparent that because the evidence necessary for the determination of petitioner's contention was not developed at trial, the Court of Appeal rejected petitioner's contentions on procedural grounds. Denial on procedural grounds is not exhaustion. *Conway v. Wilson,* 368 F.2d 485, 487 (9th Cir. 1966).

The state courts have not had the opportunity to pass upon the merits of petitioner's fully developed claim, with the same facts here presented. See California Penal Code, Section 1473, et seq., *Schiers v. People of the State of California,* 333 F.2d 173 (9th Cir. 1964).

"It would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation" *Darr v. Burford,* 339 U S. 200, 204 (1950), overruled in other respects, *Fay v. Noia,* 372 U.S. 391, 435 - 436 (1963). Therefore, this Court should accord the state courts this opportunity.

Petitioner is encouraged to reframe his contention and to seek collateral habeas corpus relief, wherein sufficient facts regarding his argument, with its waiver and by-pass ramifications, can be developed. Although petitioner argues that a return to the state courts will be "futile", such argument is merely conclusory. Moreover, consideration of petitioner's factual allegations, not included in the record, ameliorates the existence of the habeas corpus proceeding as a second, fruitless source of appeal.

Petitioner has asserted no "exceptional circumstances"

to excuse his failure to exhaust, *Bowen v. Johnston,* 306 U.S. 19, 27 (1939). Thus, given its clear noncompliance with the mandate of 28 U.S.C. § 2254 (b) and (c), petitioner is not entitled to issuance of a writ of habeas corpus. It is therefore recommended that the petition be denied.

DATED: March 19, 1975

VENETTA S. TASSOPULOS
United States Magistrate

APPENDIX "E"

STATUTES INVOLVED

28 U.S.C. § 636 (b) Judiciary – Procedure

(b) Any district court of the United States, by the concurrence of a majority of all the judges of such district court, may establish rules pursuant to which any full-time United States magistrate, or, where there is no full-time magistrate reasonably available, any part-time magistrate specially designated by the court, may be assigned within the territorial jurisdiction of such court such additional duties as are not inconsistent with the Constitution and laws

of the United States. The additional duties authorized by rule may include, but are not restricted to–

(1) service as a special master in an appropriate civil action, pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts;

(2) assistance to a district judge in the conduct of pretrial or discovery proceedings in civil or criminal actions; and

(3) preliminary review of applications for posttrial relief made by individuals convicted of criminal offenses, and submission of a report and recommendations to facilitate the decision of the district judge having jurisdiction over the case as to whether there should be a hearing.

28 U.S.C. § 2243 Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

28 U.S.C. § 2254 State custody; remedies in Federal courts

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such

(Appendix "E")

28 U.S.C. § 2254 (b)

process ineffective to protect the rights of the prisoner.

28 U.S.C. § 2254 State custody; remedies in Federal courts

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

†

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326½ Main Street, Huntington Beach, California 92648, that on JULY 15 1975, I served the within PETITION FOR WRIT OF CERTIORARI (PERLMAN v. PITCHESS) on the following named parties by depositing the designated copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

Attorney General
State of California
3580 Wilshire Blvd.
Los Angeles, Ca. 90010
(2 copies)

District Attorney
County of Los Angeles
1800 Criminal Courts Bldg.
210 W. Temple Street
Los Angeles, Ca. 90012
(2 copies)

County Counsel
County of Los Angeles
648 Hall of Administration
Los Angeles, Ca. 90012
(2 copies)

United States Court of Appeal
For the Ninth Circuit
P. O. Box 547
San Francisco, Ca. 94101
(2 copies)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JULY 15th 1975, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer

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